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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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| CESAR ASCARRUNZ,<br>Plaintiff and Appellant,<br>v.<br>HOWARD HSU et al.,<br>Defendants and Respondents. | A143766<br><br>(San Francisco County<br>Super. Ct. No. CGC-09-484769) |

Appellant Cesar Ascarrunz is described in respondent Millie Luong's brief as having been "a litigant in around 50 matters, mostly as plaintiff,". . . "whose abnormal litigation pathology puts into context the questionable prosecution he maintained against Luong"—a description Ascarrunz does not dispute in his reply. In this case, Ascarrunz sued Luong (and five other named defendants) in February 2009. The case came to be at issue on the third amended complaint, which included claims on a contract and among other things alleged alter ego claims against all defendants. The lawsuit proceeded for over five years and generated extensive activity, manifest by a 35-page register of actions.

In 2014, Luong successfully moved to have the case dismissed for failure to prosecute. Luong then moved for attorney fees, and the trial court awarded her $125,000, following a tentative ruling that relied on *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124 (*Reynolds*), which is on point.

We affirm. And doing so, on our own motion we assess sanctions in the amount of $9000 against Ascarrunz and his counsel for pursuing an appeal that can only be described as frivolous.

**BACKGROUND**

In February 2009, Ascarrunz filed a complaint naming five defendants, including Luong. That complaint and its first two successors are not in the record, as the case came to issue on the third amended complaint, which is in the record. The action is based on a failed purchase of Club Q, a San Francisco nightclub, an action described in Ascarrunz's words this way: "[o]versimplified, [Ascarrunz] deposited $60,000 with Defendants and they returned only $18,500. They owe [Ascarrunz] a minimum of $41,500 and cannot show payment." Ascarrunz alleged claims for intentional misrepresentation, two claims for breach of contract, restitution based on rescission, unjust enrichment, and breach of fiduciary relationship. As pertinent here, paragraph 39 contained allegations that the defendants were all alter egos of the other. As also pertinent here, the complaint prayed for attorney fees based on a provision in the contract on which Ascarrunz was suing.

The case proceeded into 2014, as noted generating a 35-page register of actions. As the trial court would later comment, "[T]here was a lot of work done . . . .This case has been going on a long time . . . .There has been a tremendous amount of litigation."

In May 2014, Luong filed a motion for mandatory dismissal for failure to bring the case to trial within five years. The motion was granted.

Luong then filed a motion for attorney fees, seeking $731,340. The motion was premised on Civil Code section 1717, and cited *Hsu v. Abarra* (1995) 9 Cal.4th 863, 877. The amount sought was based on a declaration from Luong's attorney and its extensive exhibits.

Ascarrunz filed opposition, 218 pages of opposition to be precise. That opposition included a request for judicial notice and evidentiary objections to the attorney's declaration. Ascarrunz's opposition cited, among other cases, *Reynolds*. Luong filed a reply brief which relied on *Reynolds*, and the trial court continued the motion, requesting that the parties brief *Reynolds*, on which Luong had first relied in her reply brief.

Following those briefs, the motion came on for hearing on September 26, prior to which the court issued a lengthy and comprehensive tentative ruling granting the motion—a ruling that relied on *Reynolds* and distinguished the few cases cited by Ascarrunz. In the course of the argument, the court observed that Civil Code section 1717 "and the case law that follows it, it mandates my decision there."

The court thereafter entered a three-page order that provides in its substance as follows:

"Luong's motion for attorney's fees is granted. In *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, the plaintiff brought suit to collect a note signed by the corporation, suing individual defendants on an alter ego theory. The *Reynolds* court recognized that the individual defendants, though nonsignatories to the note, would have been liable for attorney fees had plaintiff prevailed in establishing alter ego liability. Accordingly, the demands of reciprocity under Civil Code section 1717 required that such section be 'interpreted to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant.' *Reynolds*, 25 Cal.3d at 128.

"In this case, paragraph 39 of the 3rd Amended Complaint alleges that all of the defendants are alter egos of each other and Ms. Luong was named as a defendant on the breach of contract (Asset Purchase Agreement) cause of action (3rd Amended Complaint, 26:13). Ms. Luong prevailed on the Third Amended Complaint when she obtained a dismissal of that pleading. Therefore, she is entitled to fees per *Reynolds*. If Mr. Ascarrunz prevailed on his breach of contract and alter ego claims, he would have been entitled to seek fees from Ms. Luong.

"Mr. Ascarrunz's cases are distinguishable. In *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295, a signatory defendant sought fees against a nonsignatory plaintiff and the nonsignatory plaintiff would have been unable to recover fees if he prevailed. In *Sweat v. Hollister* (1995) 37 Cal.App.4th 603, 616, the party claiming fees was not a party to the germane contract. The court explained that a party

must base the fee claim on a statute or contract and the doctrine of equitable estoppel does not allow the recovery of fees. In *Bear Creek Planning Committee v. Ferwerda* (2011) 193 Cal.App.4th 1178, the court found that there was no binding fee clause and the estoppel theory failed. [¶] . . .

"Ms. Luong is entitled to recover a total of $125,000 as reasonable attorney's fees for prevailing on the 3rd Amended Complaint. The fees claimed in her motion are excessive; the billing statements are padded and unclear.

"It is so ordered."

Ascarrunz appealed.

## DISCUSSION

### The Appeal Has No Merit

We review de novo a determination whether the criteria for an award of attorney fees have been satisfied. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213.) That review leads to the same conclusion as that reached by the trial court: *Reynolds* is dispositive.

In *Reynolds*, plaintiff brought an action against two shareholders and directors of two bankrupt corporations, seeking to hold them liable for the debts owed plaintiff by the corporations, claiming defendants were "alter egos" of the companies. One count was based on two unpaid promissory notes executed by one corporation, which provided for recovery of collection costs, including attorney fees limited to 15 percent of the principal amount. Defendants had not signed the promissory notes. The trial court rejected the alter ego theory and absolved defendants from personal liability for the obligations of the corporations. The trial court also granted defendants 100 percent of their legal fees incurred in attachment proceedings, 75 percent of their fees incurred from the commencement of the lawsuit until certain tort causes of action were dismissed, and 100 percent of their remaining fees. Plaintiff appealed the attorney fees award. (*Reynolds*, 25 Cal.3rd at p. 127.)

While reversing as to the amount of the award, the Supreme Court affirmed the propriety of attorney fees to defendants, in language strikingly applicable here:

"Civil Code section 1717 provides in part: 'In any action on a contract, where such contract specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract, shall be awarded to one of the *parties, the prevailing party, whether he is the party specified in the contract or not*, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.'[] (Italics added.)

"The language of the statute is unclear as to whether it shall be applied to litigants who like defendants have not signed the contract. The section refers to 'any action on a contract' thus including any action where it is alleged that a person is liable on a contract, whether or not the court concludes he is a party to that contract. Nevertheless the terms 'parties' and 'party' are ambiguous. It is unclear whether the Legislature used the terms to refer to signatories or to litigants.

"Section 1717 was enacted to establish mutuality of remedy where contractual provision makes recovery of attorney's fees available for only one party [citations], and to prevent oppressive use of one-sided attorney's fees provisions. [Citation.]

"Its purposes require section 1717 be interpreted to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant.

"Attorney's fees were awarded pursuant to section 1717 to a person found not to be a signatory to a contract in *Babcock v. Omansky* (1973) 31 Cal.App.3d 625, 633-634. The defendant prevailed following the plaintiff's allegation she was liable as a coventurer or partner with another defendant who had executed a promissory note providing for attorney's fees. Concluding that the nonsigning defendant was entitled to attorney's fees, the court reasoned the language of section 1717 was sufficiently broad to include persons who had not signed the contract but were sued on the note and found not to be parties to it. [Citations.] [¶] . . .

"Had plaintiff prevailed on its cause of action claiming defendants were in fact the alter egos of the corporation [citation], defendants would have been liable on the notes.

Since they would have been liable for attorney's fees pursuant to the fees provision had plaintiff prevailed, they may recover attorney's fees pursuant to section 1717 now that they have prevailed." (*Reynolds*, 25 Cal.3d at pp. 128–129.)

Ascarrunz attempts to distinguish *Reynolds* in a two-paragraph discussion, which attempt is in the course of an argument that begins with this bold faced statement: **"**The Allegations of Alter-ego in the Third Amended Complaint Were Bare Conclusionary Allegations." Ascarrunz then asserts that there are no charging allegations specifically alleged against Luong, only bare allegations against all defendants. These two paragraphs follow:

"The agency/alter-ego allegations in the TAC were simply bare conclusionary allegations that failed to pertain to any of the specific contractual relationships of any of the parties. In relying on *Reynolds*, LUONG attempts to place herself in the shoes of alter-ego shareholders who would be awarded attorney's fees as the prevailing party and argue that the alter-ego allegations found solely in paragraph 39 of the general allegations of the TAC are similar to *Reynolds*. However, *Reynolds* is factually distinguishable in that it was an alter-ego action against the individual shareholders behind defunct corporations. In addition, *Reynolds* was actually tried and the trial court found that the shareholders were not responsible . . . .

"In the instant case, (i) LUONG did not claim any involvement in the alleged conduct giving rise to the action; (ii) there was no pre-existing relationship between LUONG and ASCARRUNZ; (iii) LUONG conceded that she was neither a party, signatory, successor, assignee nor third-party beneficiary under the Agreement; and (iv) LUONG did not provide any evidence that she was an alter-ego of any co-Defendants.[] Without such evidence, LUONG could not stand in the shoes of any of the parties to the Agreement."

We would describe Ascarrunz's attempt at distinction as fatuous**,** if not fantastic. Luong's brief has an accurate description of why, and we quote it here in part:

"The [A]OB next argues, as distinguishing, that *Reynolds* 'was actually tried and the trial court found that that the shareholders were not responsible.' [A]OB 14. This is

an odd argument because if there was a trial, and there was a judicial finding of no alter-ego, then why were defendants still awarded cost/fees based on that plaintiff's alter-ego allegation? The fact the award was made, in spite of the trial determinat[ion] of no alter-ego, actually confirms it is the Signatory Plaintiff's allegation of alter-ego in the pleading that matters. The [A]OB does not explain what this argument represents.

"The [A]OB also argues, 'there was no pre-existing relationship between Luong and Ascarrunz.' [A]OB 14. Again, there is no explanation what this means or its relevance. A pre-existing relationship between Luong and Ascarrunz is irrelevant for purposes of the alter-ego theory alleged in the TAC. Based on that allegation, Club Q, an express party to the Contract, was alleged to be Luong's alter ego. Luong was not alleged to be alter-ego to Ascarrunz, so their relationship status is irrelevant. The TAC, moreover, alleged plenty regarding Luong's relationship to Club Q as that is where the alter-ego is alleged in the TAC to exist.

"The [A]OB continues, 'Luong conceded that she was neither party, signatory, successor, assignee nor third-party beneficiary.' [A]OB 15. Correct, and Luong has never asserted she held any of those statuses. Luong loves how the [A]OB states she 'conceded' these points as if she were fighting to cling to one of those statuses . . . . Luong, moreover, would have no reason to claim these statuses as Mutuality of Remedy confirms none of those statuses matter under the doctrine.

"The [A]OB brief saves the best for last. It argues 'Luong did not provide any evidence she was an alter-ego of any co-Defendants. Without such evidence, Luong could not stand in the shoes of any of the parties to the Agreement.' [A]OB 15. This one is funny. Perhaps Ascarrunz can suggest what evidence does a party, who truthfully denies alter-ego, have in her possession to present to the court? To illustrate the absurdity, apply this evidentiary requirement to the *Reynolds* context. Trial just ensued, exorbitant resources were expended by defendants to successfully show the corporation was not their alter-ego. A post trial motion for attorney fees occurs, and those defendants now must provide evidence to the court the corporation was, indeed, their alter-ego? This certainly did not happen in *Reynolds* as all the analysis to confirm awarding cost/fees

simply turned on examination of plaintiff's pleading allegations mixed with hypothetical question could plaintiff have collected cost/fees if he prevailed on those allegations."

*Pueblo Radiology Medical Group, Inc. v. Gerlach* (2008) 163 Cal.App.4th 826, a case not even mentioned by Ascarrunz, is also on point—indeed, rejecting one of the very arguments Ascarrunz asserts here. There, in affirming an award of attorney fees to defendants who had succeeded against a claim of alter ego, the court held as follows:

"Pueblo contends that *Reynolds* is distinguishable because attorney fees were awarded only after the breach of contract claim was decided and the plaintiff was found to be liable. We disagree. The award of attorney fees under section 1717 was proper. The Supreme Court said, '*Had plaintiff prevailed on its cause of action claiming defendants were in fact the alter egos of the corporation* [citation], defendants would have been liable on the notes.' (*Reynolds Metals Co. v. Alperson, supra,* 25 Cal.3d 124, 129, italics added.) The fact that the breach of contract claim and alter ego issue were tried together is irrelevant. The determinative fact was that the individual defendants had prevailed on the alter ego issue. (*Id*. at p. 127 ['After lengthy trial, the court rejected the "alter ego" theory advanced by plaintiff, absolving defendants from personal liability for the obligations of [the corporations]' and 'granted defendants $80,500 in attorney's fees'].) The trial court's determination that respondents were not the alter egos of the corporation effectively ended the case as to them. They were entitled to recover attorney fees under the contract.[]

"The award of attorney fees in *Reynolds* is an application of the accepted rule that attorney fees may be awarded to a defendant when a final determination has been made in the defendant's favor. (See, e.g., *First Security Bank of Cal. v. Paquet* (2002) 98 Cal.App.4th 468, 475 [where an action is final as to defendants in their individual capacities, trial court properly determined they had prevailed in the action for purposes of awarding § 1717 attorney fees].)" (*Pueblo Radiology Medical Group, Inc. v. Gerlach, supra,* 163 Cal.App.4th at p. 829.)

Ascarrunz's argument relies essentially on *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295 (*Leach*), asserting "it was error for the trial court not to rely

on" it. As quoted above, the trial court rejected Ascarrunz's reliance on *Leach* in a one-line distinction of it. Such distinction is ignored in Ascarrunz's brief, which quotes the penultimate sentence in *Leach*, a quotation that disregards the actual holding of the case, which was that the party seeking fees could not obtain them because the person from whom they were sought would have had no right to them if she had prevailed. It was for this reason the *Leach* court held *Reynolds* inapplicable: "*Reynolds* and *Babcock* involve a nonsignatory defendant's right to receive attorney's fees from a signatory plaintiff who would have received fees if the plaintiff had prevailed. In our case, signatory defendants seek fees from Leach, a nonsignatory plaintiff who would have no contractual or statutory right to receive fees if she had prevailed. The logic of *Reynolds* and *Babcock* does not apply in this different factual context." (*Leach, supra,* at p. 1306)

That is not the case here, where Ascarrunz sued on a contract that had an attorney fee provision; and, he claimed, Luong was the alter ego of the signatory on that contract. So, had Ascarrunz prevailed, he would have been entitled to attorney fees from Luong—as his counsel acknowledged at oral argument.

In his reply brief, Ascarrunz four times cites to *Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443, a case not cited in his opening brief. Not only is such citation inappropriate, it is unavailing, as an accurate reading of the case shows it is devastating to Ascarrunz.

Ascarrunz argues as follows: "In *Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443, 451, the court held that Franzia, an account debtor, would be entitled to recover its attorney fees only if it would have been liable for the attorney fees of the Bank, an account assignee, if the Bank had prevailed. The court further held that in order to make that determination, it required an examination of the claims made by the Bank in its complaint in intervention. After a thorough review of the record, the court in *Dell Merk* concluded:

" 'We conclude the Bank would not have been entitled to fees on the portion of its complaint in intervention, as an assignee seeking payment of any remaining funds due to Dell Merk from Franzia on the project contract. Therefore, Franzia is not entitled under

the reciprocity provision of section 1717 to its fees in defending such claim on the contract between Dell Merk and Franzia.' *Id.*, at 454."

True enough. Had Ascarrunz read on, he would have read this:

"We now consider whether Franzia was entitled to attorney fees based on its defense of Bank's other claim seeking repayment of the first progress payment because Franzia failed to make the payment jointly payable to Bank and Dell Merk after it received notification from Bank to do so. This portion of Bank's action was not based on the Dell Merk/Franzia contract,[] but was a separate claim arising from Bank's exercise of its rights under the security agreement to notify Franzia to jointly pay Bank and Dell Merk. Bank alleged Franzia, although a nonsignatory to the security agreement, breached its obligation to pay Bank after such notification. Although it was pled as an action under the UCC and Bank did not pray expressly for attorney fees,[] the question is whether Franzia's failure to make the first progress payment jointly payable to Dell Merk and Bank was nevertheless an action 'on the contract' for purposes of section 1717. If Bank would have been legally entitled to fees if it had prevailed, Franzia would be entitled to its fees for defending Bank's action when Bank lost. [Citation.]

"The Supreme Court has concluded that section 1717 provides a reciprocal remedy for a nonsignatory defendant, 'sued on a contract as if he were a party to it,' if the signatory would 'clearly be entitled to attorneys' fees should he prevail in enforcing the contractual obligation against the [nonsignatory].' (*Reynolds Metals Co. v. Alperson, supra*, 25 Cal.3d at p. 128.) Read literally, the requirements of *Reynolds* are met: Bank, in an action on a contract, sought damages from Franzia, a nonsignatory defendant. Had Bank established that Franzia was bound by the contract, it would have been entitled to attorney fees consistent with the terms of the security agreement. The fact that Bank did not request fees is inconsequential.[]

"The fact that Bank's contractual claim was baseless does not matter. It is nonetheless obligated, by virtue of section 1717, to pay fees to the party that ultimately prevailed, Franzia." (*Dell Merk, Inc. v. Franzia, supra*, 132 Cal.App.4th at pp. 454-455.)

**The Appeal is Frivolous**

By letter of August 31, 2015, this court advised Ascarrunz that on our own motion we were considering imposition of sanctions for "taking a frivolous appeal or appealing solely to cause delay. (See Cal. Rules of Court, rule 8.276(a)(1); *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 654; *In re Marriage of Schnabel* (1994) 30 Cal.App.4th 747, 753.)" The letter indicated that "Any opposition can be made by letter brief, which opposition shall be filed in accordance with California Rules of Court, rule 8.276(d)." We received such letter from Kenneth McDonald, counsel for Ascarrunz, and the subject of sanctions was addressed at oral argument.

One question at that argument was why counsel for Luong did not file a motion for sanctions. He explained that, assuming the case were affirmed, Luong would be entitled to further attorney fees, and thus sanctions would be unnecessary. Mr. McDonald maintained the position put forth in his letter, that the appeal was not frivolous.

Code of Civil Procedure section 907 provides that "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." And California Rules of Court, rule 8.276, subdivision (a)(1) provides that a court of appeal may impose sanctions for "[t]aking a frivolous appeal or appealing solely to cause delay.

"[A]n appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts. Thus, an appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]" (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 (*Flaherty*). Accord, *Keitel v. Heubel* (2002) 103 Cal.App.4th 324, 337)

Mr. McDonald asserts that the appeal is not frivolous within *Flaherty* and its progeny. We conclude otherwise.

As described above, at least two cases are on point. Ascarrunz attempts to distinguish one, an attempt that, as we described it, is "fatuous, if not fantastic." Ascarrunz ignores the other case. Beyond that, the key cases on which Ascarrunz primarily relies are easily distinguishable.

The description in *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 32 is apt. There, in ordering $32,000 in sanctions, the Court of Appeal said this: "Given the facts and controlling legal authority, we believe 'any reasonable attorney would agree that th[is] appeal is totally and completely without merit.'. . . Indeed, given . . . appellate counsels' utter failure to discuss the most pertinent legal authority . . . , and their preparation of a grossly inadequate record, we conclude they knew as much, and subjectively prosecuted the appeal for an improper purpose [Citation.]."

Sanctions are appropriate here, as they were in similar cases. (See *Millennium Corporate Solutions v. Peckinpaugh* (2005) 126 Cal.App.4th 352, 360–363 [appeal "indisputably has no merit"]; *Caro v. Smith* (1997) 59 Cal.App.4th 725, 738–739 [appeal "lack[ed] even arguable merit"]; *Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 785–787 ["[N]o reasonable attorney could have thought this . . . appeal meritorious."].).

Luong is not "the only person aggrieved by this frivolous appeal. Those litigants who have nonfrivolous appeals are waiting in line while we process the instant appeal. Several courts have approved of sanctions made payable to the Court of Appeal for the filing of a frivolous appeal." (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1451.)

At least since 1988, when *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1 (*Finnie*) was decided, California courts had no difficulty concluding that Code of Civil Procedure section 907 and the appellate court rule authorize sanctions payable to the court. *Finnie* found that the costs compensable to the courts—and through them the taxpayers—for the expense of processing, reviewing, and deciding a frivolous appeal consisted of "the salaries paid to clerks, judicial attorneys, secretaries, and justices for their time expended . . ." (*Id*. at p. 17.) The court found that the cost calculation must be made on an objective basis; that is, the current cost of processing "an average civil appeal" (*Ibid.)* which, at the time *Finnie* was decided, was (at least in this district)

determined to be approximately $2,324. (*Finnie v. Town of Tiburon, supra*, 199 Cal.App.3d at p. 17.)

Since then various courts have assessed sanctions on this basis in varying amounts. The following are illustrative:

*Marriage of Economou* (1990) 223 Cal.App.3d 97, 107–108 [sanction of $15,000 as "proper total cost to the state assignable to this case"].

*Cohen v. General Motors Corp.* (1992) 2 Cal.App.4th 893, 897 [finding $5,908.26 to be cost of average civil appeal].

*Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1621 [assessing sanction of $10,000, because "[s]urely the cost to process an average appeal has risen [from $3,995] since 1987."].

*Pollock v. University of Southern Caliornia*. (2003) 112 Cal.App.4th 1416, 1434 [noting $5,908.26 as state's cost to process average civil appeal in 2000].

Those cases are all years ago, and necessarily the cost today is much higher. Thus, we conclude, a sanction of $9000 is appropriate.

The last issue is whether Ascarrunz's attorney, Mr. McDonald, must also be responsible for that sanction. While there is nothing in the record to demonstrate an actual improper motive on Mr. McDonald's part—and his position at oral argument rejected any such motive—that does not end the inquiry, as his personal motivations are less relevant then his professional responsibilities.

Here, Mr. McDonald entered the picture late, following the award of attorney fees. He thus had the benefit of all that had occurred, including the ruling of an experienced trial judge who concluded that *Reynolds* "mandates" his decision. Despite that, Mr. McDonald took the appeal, this on behalf of a client who, as our opening line describes it, was accused of a "questionable prosecution" against Luong—a description Ascarrunz did not deny.

"[C]ounsel has a professional responsibility not to pursue an appeal that is frivolous . . . just because the client instructs him or her to do so. (Rule 2–110C, Rules Prof. Conduct.)" (*Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 134

[260 Cal.Rptr. 369].) Further, it is the attorney's duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just . . . ." (Bus. & Prof. Code, § 6068, subd. (c); see also Cal. State Bar Rules Prof. Conduct, rule 3–200.) In light of all this, Mr. McDonald too should be subject to sanction.

**DISPOSITION**

The order awarding attorney fees is affirmed. Luong is entitled to her costs on appeal. And Ascarrunz and his counsel are sanctioned jointly and severally in the amount of $9000. Such sanction shall be paid to the First District Court of Appeal, within 30 days after this opinion becomes final. The clerk of this court is directed to forward a copy of this opinion to the State Bar upon issuance of the remittitur. (Bus. & Prof. Code, § 6086.7, subd. (a).)

_____
Richman, J.

We concur:

_____
Kline, P.J.

_____
Stewart, J.